

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MANUEL M. SOARES,
CDCR # F-39579,

Plaintiff,

vs.

DANIEL PARAMO, et al.,

Defendants.

Case No.: 3:13-cv-02971-BTM-RBB

**ORDER DENYING MOTION FOR
RECONSIDERATION**

[ECF No. 76]

Manuel M. Soares (“Plaintiff”), is a prisoner currently incarcerated at the California Health Care Facility (“CHCF”) in Stockton, California, and is proceeding pro se and in this civil action pursuant to 42 U.S.C. § 1983.

Defendants are all correctional and mental health care officials employed at Richard J. Donovan Correctional Facility (“RJD”) where Plaintiff was incarcerated in November 2012. *See* ECF No. 1 at 1-2, 4-5.

I. Procedural History

On May 25, 2016, the Court granted Plaintiff’s Motion to Join/Amend in order to add additional parties and claims, and denied his Motion for Summary Judgment without prejudice as premature (ECF No. 61). Instead of amending, however, Plaintiff filed a

1 Motion to withdraw his previously filed Motion to Join/Amend (ECF No. 67). The Court
 2 denied Plaintiff's Motion to Withdraw on June 16, 2016 as moot, but also construed it as
 3 Plaintiff's Notice of Intent to stand on his previous pleadings. (ECF No. 68).

4 Plaintiff has since filed a Motion for Reconsideration of this Court's May 25, 2016
 5 Order—at least to the extent it denied his Motion for Summary Judgment (ECF No. 76).
 6 Essentially, Plaintiff asks the Court to again rule on the Motion for Summary Judgment it
 7 has already denied as moot, arguing that it is no longer premature because the period for
 8 fact discovery in his case has since closed.¹

9 **II. Plaintiff's Motion for Reconsideration**

10 **A. Standard of Review**

11 The Federal Rules of Civil Procedure do not expressly provide for motions for
 12 reconsideration. However, a motion requesting reconsideration of a matter previously
 13 decided may be construed as a motion to alter or amend judgment under Rule 59(e) or Rule
 14 60(b). *See Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989); *In re Arrowhead*
 15 *Estates Development Co.*, 42 F.3d 1306, 1311 (9th Cir. 1994). A Rule 59(e) motion must
 16 be filed “no later than 28 days after the entry of the judgment.” FED. R. CIV. P. 59(e).
 17 Because Plaintiff's current Motion was filed after the 28 days permitted by FED. R. CIV. P.
 18 59(e), the Court will consider his request to arise under FED. R. CIV. P. 60. Under Rule 60,
 19 a motion for “relief from a final judgment, order or proceeding” may be filed within a
 20 “reasonable time,” but usually must be filed “no more than a year after the entry of the
 21 judgment or order or the date of the proceeding.” FED. R. CIV. P. 60(c)(1).

22 ///

25 ¹ This is true; however, the period for expert discovery will not be complete until August
 26 15, 2016, and the deadline to bring pretrial motions in this case will not expire until
 27 September 12, 2016. (ECF No. 43 at 3.) Moreover, discovery disputes remain outstanding
 28 in this case as Plaintiff himself has since filed a Motion to Quash Subpoena (ECF No. 70).
 On July 14, 2016, Defendants to filed a response to Plaintiff's Motion (ECF No. 73), but
 Judge Brooks has yet to consider Plaintiff's Motion.

1 Rule 60(b) provides for reconsideration where one or more of the following is
 2 shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered
 3 evidence which by due diligence could not have been discovered before the court's
 4 decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has
 5 been satisfied; (6) any other reason justifying relief. FED. R. CIV. P. 60(b); *School Dist. 1J*
 6 *v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

7 “Although the application of Rule 60(b) is committed to the discretion of the district
 8 courts . . . , as a general matter, Rule 60(b) is remedial in nature and must be liberally
 9 applied.” *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 695-96 (9th Cir. 2001)
 10 (internal quotation marks and ellipsis omitted). Nevertheless, Rule 60(b) provides for
 11 extraordinary relief and may be invoked only upon a showing of “exceptional
 12 circumstances.” *Engleson v. Burlington N.R. Co.*, 972 F.2d 1038, 1044 (9th Cir. 1994).

13 **B. Plaintiff’s Motion**

14 Plaintiff does not seek reconsideration based on mistake, inadvertence, surprise or
 15 neglect. He does not present any newly discovered evidence, point to fraud, argue that the
 16 Court’s May 25, 2016 Order is void, that any judgment has been satisfied, or point to any
 17 “other reason” that might justify reconsideration. *See* FED. R. CIV. P. 60(b)(1)-(6).

18 As noted above, this Court denied Plaintiff’s Motion for Summary Judgment without
 19 prejudice as premature because it *was* premature given his request for leave to amend, and
 20 the fact that the period for discovery had yet to close. *See* ECF No. 61 at 10. In fact, the
 21 period for discovery in this case has *still* yet to close—Plaintiff’s recently filed Motion to
 22 Quash a subpoena is still pending (ECF No. 70), and the motion cut-off date set for the
 23 filing of all pre-trial motions is almost two months away. (ECF No. 43 at 3.)

24 The Court notes that the denial of Plaintiff’s Motion for Summary Judgment was
 25 without prejudice. Nothing prevents him from seeking a future summary judgment, and
 26 filing a motion that incorporates all relevant materials in the record obtained *after* the
 27 period set for the completion of all discovery as contemplated by Rule 56 has elapsed. *See*,
 28 *e.g.*, *Moore v. Hubbard*, No. 06cv2187, 2009 WL 688897, at *1 (E.D. Cal. Mar. 13, 2009)

(recommending that pre-discovery motion for summary judgment be denied as premature); see also *Burlington N. Santa Fe R.R. Co. v. Assiniboine & Sioux Tribes of Fort Peck Reservation*, 323 F.3d 767, 773 (9th Cir. 2003) (noting that when “a summary judgment motion is filed so early in the litigation, before a party has had any realistic opportunity to pursue discovery relating to its theory of the case,” the district court should grant requests by non-movants to take discovery prior to considering motion for summary judgment).

However, because Plaintiff has provided no basis for the Court to vacate or set aside its March 28, 2016 Order, relief under Rule 60 is not warranted. See *School Dist. No. 1J*, 5 F.3d at 1442; *Engleson*, 972 F.2d at 1044. A motion for reconsideration cannot be granted simply because Plaintiff is unhappy with the judgment, frustrated by the Court’s application of the facts to binding precedent or because he disagrees with its ultimate decision. See 11 Charles Alan Wright & Arthur R. Miller Federal Practice & Procedure 2d § 2858 (Supp. 2015) (citing *Edwards v. Velvac, Inc.*, 19 F.R.D. 504, 507 (D. Wis. 1956)).

III. Conclusion and Order

For these reasons, the Court **DENIES** Plaintiff’s Motion for Reconsideration (ECF No. 76).

Date: July 25, 2016


 Hon. Barry Ted Moskowitz, Chief Judge
 United States District Court